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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: Comments of Davis Broadcasting, Inc. of Columbus in the
Matter of Rules and Policies Concerning Multiple Ownership
Of Radio Broadcast Stations in Local Markets-Definition of
Radio Markets-MM Docket No. 01-317 and
MM Docket No. 00-244

Dear Ms. Salas:

On behalf of Davis Broadcasting, Inc. of Columbus ("Davis"), enclosed is an original and six copies of Davis' comments to the above-referenced matter.

Please contact me if there are any questions about these comments.

Sincerely yours,



Dean R. Brenner
Attorney for Davis Broadcasting, Inc. of Columbus

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Before The
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**
Washington, D.C. 20554

MAR 27 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Rules and Policies Concerning)
Multiple Ownership of Radio Broadcast)
Stations in Local Markets)

MM Docket No. 01-317

Definition of Radio Markets)
_____))

MM Docket No. 00-244

COMMENTS OF DAVIS BROADCASTING, INC. OF COLUMBUS

Davis Broadcasting, Inc. of Columbus ("DBI"), by its attorneys and pursuant to the Commission's Notice of Proposed Rule Making and Further Notice of Proposed Rule Making, FCC 01-329, released November 9, 2001, hereby submits its Comments in these proceedings.

I. Introduction

DBI is a small market broadcaster which owns three radio stations (one FM and two AM) in Columbus, GA and one FM station in Greenville, GA. Although DBI would have a difficult time under the best of circumstances competing against stations owned by large national media conglomerates, DBI nevertheless supports vigorous competition in local radio markets - specifically head-to-head competition that is on the merits of a station's audience strength and format in a market. DBI and other small market broadcasters cannot survive, however, if they have to face the unfair competition which emerges when the Commission's rules allow a superduopoly to gain a dominant market position in a local market and then to use such dominance to generate revenues which the superduopoly would not have garnered absent its dominant market position. The Commission's rules are supposed to ensure that local radio

markets are competitive. However, the rules, as they stand now under current interpretations, are not achieving that result.

DBI is submitting these Comments to provide the Commission with the attached case study, based on the Columbus, GA radio market, which shows that the current rules are not ensuring that local markets remain competitive.¹ The attached submission shows that in Columbus, GA, a media superduopoly, first owned by Cumulus, then operated by Clear Channel via LMA, and now to be acquired by Clear Channel under a decision by the Commission issued last week², is destroying competition, whether measured in terms of disproportionate revenue growth, "power ratios," or in increased ratings in particular formats, based on predatory pricing and other anticompetitive practices. Small market broadcasters cannot survive with these type of market conditions.

Current Commission policy is allowing this unfair competition because there is no single clear market definition which the Commission uses to assess the extent of competition in local radio markets. The Commission should adopt a single clear, bright line standard to define local radio markets in measuring competition for all purposes, and DBI urges the Commission to adopt

¹DBI has brought its concerns to the Commission in the form of a petition to deny against assignment applications by which Clear Channel sought to acquire six radio stations in the Columbus, GA market from Cumulus Licensing Corp. The Commission recently denied DBI's petition in Solar Broadcasting Company, Inc., Memorandum Opinion and Order, FCC 02-62, released March 19, 2002. DBI believes that the Memorandum Opinion and Order misapplies current Commission policy, a matter which DBI will pursue on appeal. The attached submission makes DBI's case under present Commission policy. In the instant proceedings, however, as the Commission determines whether and how to revise its policies, the attached submission is highly relevant so that the Commission can, once and for all, revise its policies to prohibit the type of unfair competition documented by DBI in the Columbus, GA market.

²See Solar Broadcasting Company, Inc., Memorandum Opinion and Order, FCC 02-62, released March 19, 2002.

the service area contours (1 mV/m or 60 dBu for FM stations and .5 mV/m for AM stations) as the definition of a local radio market for all purposes. The service area contours most closely match the actual choices available in any given radio market to a listener or advertiser. And, it is the standard used by the Commission for other important purposes, including interference protection. The Commission should not define markets by determining stations with overlapping principal community contours for some purposes, stations in the same Arbitron market for other purposes, and stations with service area coverage into a market for other purposes.

Yet, that is exactly what the Commission did last week in determining whether Clear Channel could acquire six stations serving Columbus, GA. See Memorandum Opinion and Order, FCC 02-62, released March 19, 2002 at ¶¶22-23 (using overlapping principal community contours to define market for compliance with local ownership limits), ¶¶30-32 (using Arbitron to define market to assess level of concentration in market); ¶¶34-35 (adding some, but not all, of the other stations which serve Columbus, but are not in the Arbitron metro area, and do not have a principal community contour which includes Columbus as market participants to determine Clear Channel's share of the market for determining concentration). There should be one unified standard, and all stations, not some, which meet that standard should be deemed to be market participants for all purposes as the Commission decides whether the market is, or will remain, competitive. The Commission should define local radio markets with the service area contours.

II. The Lack of a Single Standard for Defining Local Radio Markets Produces Arbitrary Results; the Service Area Contours Should Be the Standard

As noted supra, the Commission recently analyzed the extent of competition in the Columbus, GA market by using three different standards to define the market: the overlapping principal community contours, the Arbitron market, and service area. This lack of a single

standard produces arbitrary results and allows for gaming of the Commission's rules. For example, in its Columbus, GA analysis, the Commission used the principal community contour standard to decide if Clear Channel's proposed acquisition would run afoul of the statutory local ownership limits. *Id.* at ¶¶22-23. The Commission then assessed the level of concentration in the Columbus market by using the Arbitron market definition to find that there were 16 commercial stations in the Columbus, GA metro, even though that market includes two stations which do not have a principal community contour which includes Columbus, WSTH (FM) and WIOL (FM). *Id.* at ¶¶30-32, 35. The latter two stations were included in the Commission's analysis because they receive substantial amounts of listening from Columbus. *Id.* at 35. Finally, the Commission determined the number of market participants by adjusting the Arbitron-defined market to add WRLD (FM) because its service area includes Columbus and it has a significant audience share there; and, finally, the Commission analyzed Clear Channel's share of the market based on the 8 stations it operates in the Arbitron-adjusted market.

This analysis was both underinclusive and highly selective. The Commission did not count all of the stations which serve Columbus and which Clear Channel owns or operates. If it had done so, Clear Channel would have been found to have been operating nine stations in Columbus, one over the statutory limit. *See* Ex. 1, the attached map which shows the service area contours of stations owned or operated by Clear Channel, nine of which include Columbus.³ When Clear Channel sells advertising in Columbus, it can offer advertisers a package of time on

³The nine stations are: WDAK (AM), WVRK (FM), WBFA (FM), WMLF (AM), WPNX (FM), WSTH (FM), WAGH (FM), WGSE (AM), and WGSY (FM). In addition, Clear Channel has acquired the rights to a pending application for the construction permit for a new FM station licensed to Cusseta, GA, which would give Clear Channel a tenth station in the market.

these nine stations which listeners hear in Columbus. There is no reason to add some, but not all, of the stations which serve Columbus to a concentration analysis, but the Commission did just that. The Commission should use the service contour standard to define markets for this and all other purposes.

Indeed, the attached map shows that Clear Channel owns or operates five other stations around Columbus: WZHT (FM), WQLD (FM), WMCZ (FM), WQBZ (FM), and WJIZ (FM). These stations have service contours which overlap the service contours of stations which include Columbus. The Commission's analysis did not include any of these stations, but Clear Channel can also offer time on these stations to advertisers seeking to reach portions of the Columbus area.

III. Conclusion

In sum, the Commission's present rules and standards are not accurately measuring the level of concentration in local radio markets. The Commission should define local radio markets based on the service contours and use that definition for all purposes.

Respectfully submitted,

By: 

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Attorney for Davis Broadcasting Inc., of Columbus

Dated: March 27, 2002

CERTIFICATE OF SERVICE

I, Dean R. Brenner, do hereby certify that a copy of the foregoing "Comments of Davis Broadcasting Inc., of Columbus" was served by mail this 27th of March 2002 to:

Hon. Michael Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

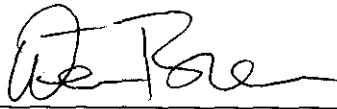
Hon. Kathleen Abernathy
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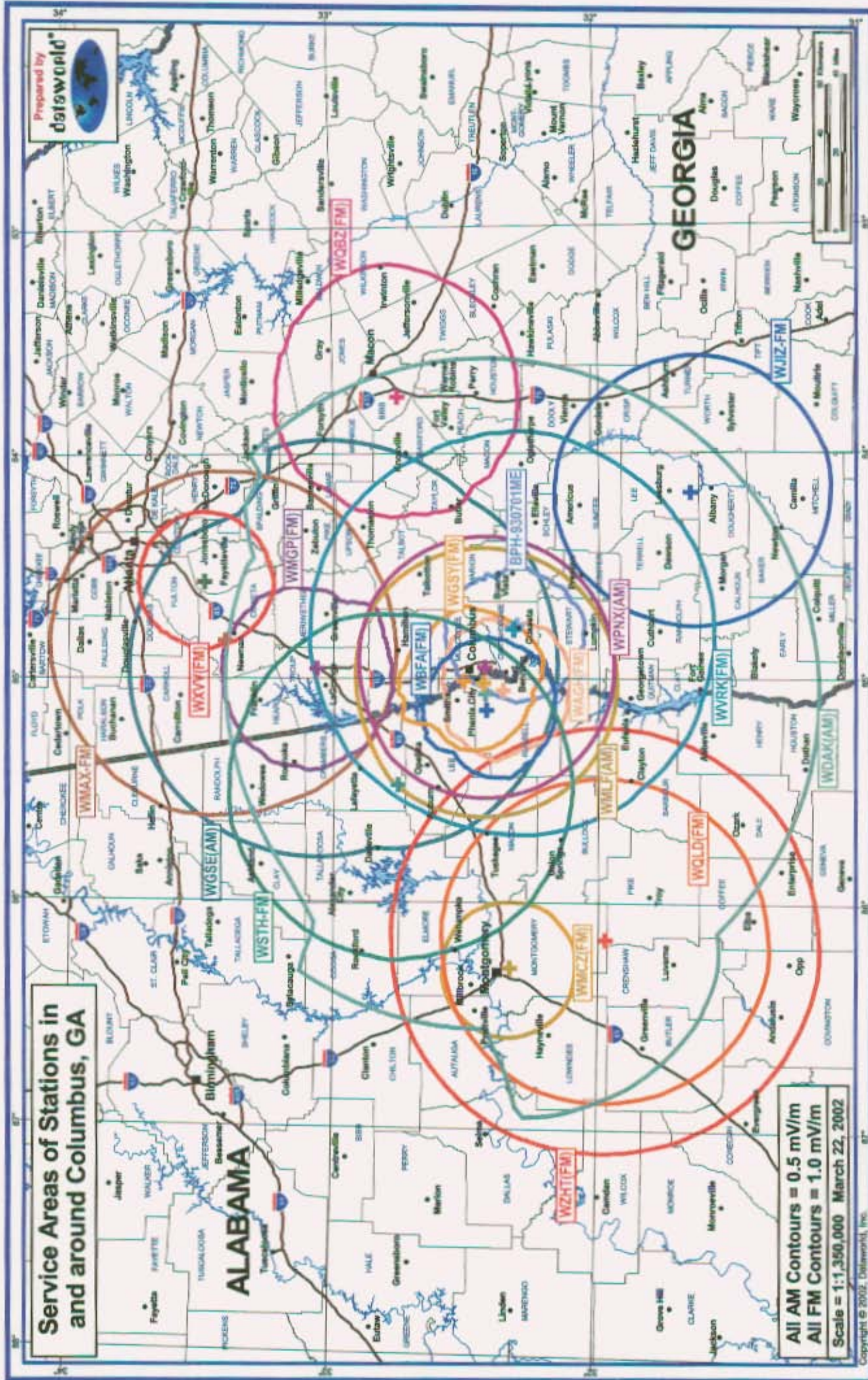
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A handwritten signature in black ink, appearing to read 'Dean R. Brenner', written over a horizontal line.

Dean R. Brenner

Service Areas of Stations in and around Columbus, GA

Prepared by
dataworld



All AM Contours = 0.5 mV/m
All FM Contours = 1.0 mV/m
Scale = 1:1,350,000 March 22, 2002

